UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONSORZIO DEL PROSCIUTTO DI SAN DANIELE, Plaintiff,	)	C.A. No. 07-039ML
v.	)	
DANIELE INTERNATIONAL, INC., Defendant.	)	

PLAINTIFF'S LOCAL RULE 56(a)
STATEMENT OF UNDISPUTED FACTS

Pursuant to Local Rule 56(a), Plaintiff Consorzio del Prosciutto di San Daniele ("Plaintiff" or "the Consorzio") submits this Statement of Undisputed Facts in support of its motion for summary judgment. There is no genuine dispute as to the following material facts.

1. Plaintiff is a consortium of the producers of prosciutto in the town of San Daniele del Friuli, Italy. Complaint ¶ 1.

2. Plaintiff is responsible for the regulation and protection of San Daniele prosciutto. Complaint ¶ 9.

3. Defendant is a Rhode Island corporation. It produces and sells prosciutto and other meat products in the United States. Complaint ¶¶ 2, 11.

4. Defendant chose Daniele Prosciutto, Inc. as its corporate name and "Daniele" as its trademark for prosciutto. It later changed its corporate name to Daniele International, Inc. Complaint ¶ 11; Answer ¶ 2.

5. In March 2005, Plaintiff and Defendant entered into an agreement to settle litigation in this Court (hereinafter the "settlement agreement"). Complaint ¶ 26.

6. The settlement agreement provided in part:

> The parties wish to resolve their differences concerning their respective trademarks and trade names, and to use their respective marks and names in harmony, with each giving full respect to the rights and privileges of the other, and to prevent confusion in the minds of customers regarding the identification and geographical location of the two parties' goods.
>
> …
>
> 2. Daniele has adopted the fictitious name Daniele, Inc. In connection with the sale of prosciutto and ham, Daniele may use, including in its logo, "Daniele, Inc." or other corporate name or fictitious name that does not include the word "International," the word "Prosciutto," or any other term that is likely to cause confusion with San Daniele.
>
> …
>
> 5. Daniele shall cease its use of the DANIELE word and logo trademarks in connection with the sale of prosciutto and ham and shall use a different trademark, bearing no resemblance to "San Daniele," for the sale of prosciutto and ham.
>
> …
>
> 10. The parties shall endeavor to avoid confusion between their trademarks and trade names.

Exhibit 1.

7. Defendant produces and sells a line of prosciutto products that includes three products sold in bulk as a whole thigh (two boneless, one boneless and shankless), one product sold in bulk as a filet of prosciutto, and one product sold as a package of pre-sliced prosciutto. **Exhibit 2,** Defendant's labels, attached to letters of I. Stephen Samuels, Sept. 11, 2006 and May 10, 2007; **Exhibits 4, 5,** Defendant's marketing brochures, 1998, 2003; **Exhibit 13,** Defendant's current marketing brochure.

8. Prior to the settlement agreement, Defendant used the "Daniele" trademark on the label of each of these prosciutto products. **Exhibit 3,** Defendant's response to Plaintiff's Document Request No. 2 in the prior litigation in this Court; **Exhibits 4, 5**.

9. Prior to the settlement agreement, Defendant called its line of prosciutto, "Daniele prosciutto." **Exhibits 4, 5; Exhibit 6,** Defendant's Web site, February 6, 2005 (Internet Archive).

10. Since the settlement agreement, Defendant claims to be using four different trademarks for prosciutto products made and sold by it. These purported trademarks are:

- Gran Premio
- President's Reserve 400
- President's
- Deli-Cut-O

Counterclaim ¶ 8; **Exhibit 2.**

11. On all of Defendant's labels bearing these designations, the trade name "Daniele, Inc." appears at the top of the label, followed by the designation "Gran Premio," "President's Reserve 400," "President's," "Deli-Cut-O" or "Riserva." **Exhibit 2.**

12. None of the alleged trademarks used by Defendant after the settlement agreement is being used on all of its prosciutto products. **Exhibit 2.**

13. In the place of Defendant's "Daniele" trademark for its line of prosciutto, Defendant is using no trademark for this purpose. **Exhibit 2.**

14. The only name now used by Defendant in connection with all of the products in its line of prosciutto is its trade name, Daniele, Inc. **Exhibit 2.**

15. After the settlement agreement was signed, on its Web site, at the top of its page for prosciutto, Defendant used "Daniele" in the heading and "Daniele – Daniele" in its logo. The text immediately following the heading began, "Each Daniele prosciutto…" At the bottom of the page were pictures of two packages bearing the name, "President's." **Exhibit 7,** Defendant's Web site, Oct. 11, 2005 (Internet Archive).

16. After being notified by Plaintiff that this use of the "Daniele" name was in violation of the settlement agreement, Defendant changed the heading of the prosciutto page to read, "Daniele, Inc.," and changed the logo in the heading to "Daniele, Inc. – Daniele, Inc." It changed the text immediately following the heading to read, "Each prosciutto…" As a result, the page began with the trade name "Daniele, Inc.," followed immediately by "Each prosciutto…" **Exhibit 8**, Defendant's Web site Nov. 30, 2005 (Internet Archive).

17. After the settlement agreement was signed, Defendant carried a recipe on its Web site for "Daniele Prosciutto Panino Bruschetta." **Exhibit 9,** Defendant's Web site Apr. 8, 2005 (Internet Archive).

18. Defendant thereafter changed the recipe on its Web site to read, "Daniele, Inc. Prosciutto Panino Bruschetta." **Exhibit 10**, Defendant's Web site, January 29, 2007.

19. After Plaintiff notified Defendant that the use of "Daniele, Inc. Prosciutto" in its recipe also violated the settlement agreement, Defendant changed the references in its recipes to merely "prosciutto." It did not specify the use of its own prosciutto. Other recipes called for the use of Defendant's own products. **Exhibit 11**, Defendant's Web site, March 8, 2007.

Respectfully submitted,

/s/ Matthew F. Medeiros_______________
Matthew F. Medeiros (#1856)
LITTLE MEDEIROS KINDER BULMAN
& WHITNEY, P.C.
72 Pine Street
Providence, RI 02903
Tel: (401) 272-8080
Fax: (401) 272-8195
mfm@lmkbw.com

Michael H. Selter (pro hac vice)
Stuart E. Benson (pro hac vice)
Manelli Denison & Selter PLLC
Suite 2000 M Street, N.W., Suite 700
Washington, D.C. 20036
Tel. 202-261-1000
Fax 202-887-0336

Dated: June 11, 2007

Counsel for Plaintiff/Counterclaim Defendant

CERTIFICATION

I hereby certify that on June 11, 2007, a copy of the foregoing Plaintiff's Local Rule 56(a) Statement of Undisputed Facts was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system, or by e-mail or to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Girard R. Visconti, Esq. Grv@viscontilaw.com

/s/ Matthew F. Medeiros_______________